

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

RICHARD APOLLO FUHRIMAN,)	CPSGMHB Case No. 04-3-0027
)	
Petitioner,)	(Fuhriman)
)	
v.)	
)	ORDER FINDING
CITY OF BOTHELL,)	COMPLIANCE [Re: Adopting
)	Implementing Development
Respondent.)	Regulations]
)	

I. BACKGROUND

On January 12, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (**FDO**) in the above captioned matter.

The FDO provided, in relevant part:

- The City of Bothell has **failed to act** to revise and update its comprehensive plan *implementing development regulations* and **has not complied** with the requirements of RCW 36.70A.130(1) and (4), regarding these development regulations. Therefore, the City of Bothell will is directed to take the necessary legislative action to comply with the revision and update requirements of RCW 36.70A.130(1) according to the following compliance schedule:
 1. By no later than **July 11, 2005**, the City of Bothell shall take appropriate legislative action to comply with the *implementing development regulations update* requirements of RCW 36.70A.130.
 2. By no late than **July 18, 2005**, the City of Bothell shall file with the Board an original and four copies of the legislative enactment(s) adopted by the City of Bothell to comply with RCW 36.70A.130 along with an statement of how the enactments comply with RCW 36.70A.130 (**compliance statement**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement on Petitioner.
 3. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. July 25, 2005** at the Board's offices. The only matter at issue at this compliance proceeding will be whether the City of Bothell enacted the required update(s) to its implementing

development regulations. The substance of those enacted updated regulations will not be part of the compliance proceeding in this case – CPSGMHB Case No. 04-3-0027 *Fuhriman v. City of Bothell*.

FDO, at 6.

Additionally, on February 1, 2005, the Board issued an “Order of Dismissal and Joining MBA to the Fuhriman Compliance Proceeding.” MBA had filed a similar challenge against the City of Bothell, alleging the City had failed to Act in adopting implementing development regulations pursuant to RCW 36.70A.130(1) and (4). Since the Board had already issued the 1/12/05 FDO finding that the City had not acted, the Board dismissed the MBA appeal and joined them as a party to the compliance proceeding.

On July 11, 2005, the Bothell City Council enacted Ordinance No. 1946, with 6 exhibits and two attachments. Ordinance No. 1946 amended the Bothell Municipal Code [BMC] to update its development regulations. Exhibit A to the Ordinance included the City’s Findings and Conclusions; Exhibit B amended the City’s procedures for administering its development regulations [BMC Title 11]; Exhibit C amended the City’s zoning regulations [BMC Title 12]; Exhibit D amended the City’s environmental regulations [BMC Title 14]; Exhibit E amended the City’s transportation regulations [BMC Title 17]; and Exhibit F amended the City’s landmark preservation regulations [BMC Title 22].

On July 18, 2005, the Board received “Declaration of William Wiselogle – Compliance Statement” (SATC).

On July 21, 2005, the Board received a “Notice of Association of Counsel” indicating that Peter J. Eglick and Jane S. Kiker are associated with the City of Bothell [Michael Weight] in this matter.

On July 22, 2005, the Board contacted the parties requesting that the compliance hearing be conducted telephonically. MBA indicated it was not going to participate in the compliance proceeding; however Petitioner Fuhriman and the City of Bothell agreed to conduct the compliance proceeding telephonically.

On July 25, 2005, the Board conducted a telephonic compliance proceeding in the above captioned matter. Board Member Edward G. McGuire, convened the proceeding. Board Members Bruce C. Laing and Margaret A. Pageler attended. Petitioner Apollo Fuhriman and Peter J. Eglick, representing the City of Bothell participated.

The City briefly explained the components of Ordinance No. 1946 and the attached Exhibits. Petitioner Fuhriman did not contest that the City had acted to update and revise its implementing development regulations as directed in the 1/12/05 FDO. However, Petitioner indicated that he may file an appeal of the substance of the update provisions.

The Board indicated that it would take official notice of the adoption of Ordinance No. 1946, to the extent it may be germane to the pending review of the City of Bothell's Comprehensive Plan in the *Fuhriman v. Bothell*, CPSGMHB Case No. 05-3-0025c matter.

II. DISCUSSION

The Board finds and concludes:

1. The City of Bothell adopted Ordinance No. 1946, including Exhibits A, B, C, D, E and F, on July 11, 2005.
2. Ordinance No. 1946 and the attached exhibits amend the City's Municipal Code, specifically the City's implementing development regulations pertaining to: 1) the administration of the City's regulations [Ex. B]; 2) zoning regulations [Ex. C]; 3) environmental regulations [Ex. D]; 4) transportation regulations [Ex. E]; and 5) landmark preservation regulations [Ex. F].
3. By enacting Ordinance No. 1946 and the attached amendatory exhibits, the City of Bothell has discharged its duty to act in updating its implementing development regulations, as required by RCW 36.70A.130(1) and (4). Therefore the Board will issue a Finding of Compliance.
4. The Board's Finding of Compliance acknowledges that the City of Bothell has complied with the "update action" requirements of RCW 36.70A.130 as interpreted in the Board's 1/12/05 FDO; the substance of the updated and amended implementing development regulations were not before the Board in this compliance review and are presumed valid.

III. ORDER

Based upon the Board's review of the GMA, prior decisions of the Boards, the January 12, 2005 FDO, Ordinance No. 1946 and attached exhibits, the City's SATC, the presentations of the parties at the compliance hearing, and having discussed and deliberated on the matter, the Board ORDERS:

- The City of Bothell's adoption of Ordinance No. 1946, with attached Exhibits A through F, discharges the City's duty to take action to update its implementing development regulations as required by RCW 36.70A.130. Therefore, pertaining to this action, the Board enters a **Finding of Compliance**.

So ORDERED this 25th day of July, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.